

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES E. BACHMAN, ADELLA A.
BACHMAN, ERIC J. BACHMAN,
RACHEL A. BACHMAN, MATTHEW R.
BACHMAN, and C. ANDREW
BACHMAN,

Plaintiffs,

vs.

JOHN Q. BACHMAN, and LEAF
SUPREME PRODUCTS, LLC, A
Nebraska Limited Liability Co.;

Defendants.

8:19CV276

MEMORANDUM AND ORDER

On October 12, 2021 the undersigned granted Defendants' request for attorneys' fees related to the motion at [Filing No. 207](#) and ordered Defendants to submit an itemized billing statement to Plaintiffs on or before October 26, 2021. ([Filing No. 216](#)). Plaintiffs were to respond to the itemization within ten days, then: (a) the parties would file a joint stipulation on or before November 12, 2021; or (b) Defendants would file a motion for assessment of fees and costs no later than November 19, 2021. Plaintiffs objected to the undersigned's order, and the objection was denied. (See [Filing No. 228](#)).

On November 11, 2021, Defendants filed a Motion for Award of Attorney Fees. ([Filing No. 227](#)). An affidavit submitted in support of Defendants' motion states that Plaintiffs' counsel did not respond to the itemized billing statement emailed to Plaintiffs' counsel on October 21, 2021, and again on November 3, 2021. ([Filing No. 227-1 at CM/ECF pp. 2, 6-7](#)). Similarly, Plaintiffs did not respond

to Defendants' pending motion for fees, and the deadline for doing so has passed. The motion is deemed unopposed and will be granted as set forth herein.

Defendants request an award of \$13,928.50 for fees granted pursuant to [Filing No. 216](#), "relating to the depositions taken and [Defendants'] pursuit of attorneys fees." ([Filing No. 227](#)). Defendants request an additional sum of \$1,247.00 for the preparation of this motion. (Id.)

The undersigned authorized attorney fees and costs incurred in litigating Defendants' motion to compel and Plaintiffs' objection to the motion to compel, specifically stating that sanctions would be awarded for the time spent preparing the motion to compel and briefing, and defense counsel's time conferring with the court and opposing counsel. ([Filing No. 216](#)). However, the order did not authorize payment for the first round of Defendants' depositions, taken in September 2021, as the court ordered the compelled depositions of James E. Bachman, Adella A. Bachman, C. Andrew Bachman, and Eric J. Bachman to be taken on or before December 17, 2021 at Plaintiffs' expense. ([Filing No. 216 at CM/ECF p. 7](#)). Defendants' itemized billing statement includes 14.3 hours for conducting the depositions of the four named individuals in September 2021. The fees awarded will be reduced by \$4,147.00 (14.3 hours at a rate of \$290 per hour) to remove that time from the award calculation. The remainder of Defendants' claimed fees related to the motion to compel are approved.

In [Filing No. 216](#), the undersigned stated, "If a motion for fees is required, the court may award Defendants up to an additional \$1,000.00 to recover the cost of preparing their motion for assessment of fees." The \$1,247.00 Defendants requested for the preparation of the instant motion is reduced to \$1,000.00.

Accordingly, IT IS ORDERED:

- 1) Defendants' motion for award of attorneys' fees, [Filing No. 227](#), is granted as follows:
 - a. Defendants are entitled to attorneys' fees of \$9,781.50 associated with the filing and briefing of the Motion to Compel at [Filing No. 207](#).
 - b. Defendants are entitled to attorneys' fees of \$1,000.00 associated with filing the instant motion.
- 2) Within thirty (30) calendar days of the date of this order, Plaintiffs shall remit \$10,781.50 in satisfaction of the sanctions awarded herein. (See Filing Nos. [216](#) and [228](#)).

Dated this 1st day of December, 2021.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge